

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
Plaintiff,

v.

BERNARD ROSS HANSEN,  
Defendant.

NO. CR18-092RAJ

ORDER ON GOVERNMENT'S  
NOTICE OF INTENT TO PRESENT  
EVIDENCE PURSUANT TO  
FEDERAL RULE OF EVIDENCE 404(b)

Pursuant to the Order Setting Revised Case Schedule (Dkt. # 83), the government provided its 404(b) notice via letter dated August 2, 2019 to the defendants. Dkt. # 201, Ex. A. Defendant Hansen filed his opposition to that notice (Dkt. # 201), the government responded, (Dkt. # 205), and Mr. Hansen replied, (Dkt. # 206). A hearing on the government's 404(b) notice was held on December 11, 2020. This Order reflects the Court's rulings on the objections.

The government's notice of 404(b) evidence provided a list of categories of "other acts" evidence it proposes to offer at trial. Since filing this notice the government modified its proposed categories in several ways. It does not intend to offer evidence of NWTM's 1989 bankruptcy, the Nevada defamation lawsuit, an alleged \$3,000 payment to an FBI informant, evidence that Ms. Erdmann sent six boxes to NWTM's archive room in Dayton, Nevada, and, finally, specific evidence about Mr. Hansen's 1987 and 1990 convictions. Dkt. # 205, pgs. 16-18.

1        Several points must be made about these apparent concessions. First, the  
2 government prefaces its remarks utilizing the limiting language that it “does not *currently*  
3 intend to offer the following evidence.” Dkt. # 205, p. 16. The government then goes on  
4 to indicate that it “may” still seek to offer this evidence and “will notify the Court” before  
5 it does. Dkt. # 205, p. 16.

6        The Court agrees with the defendant to a significant degree that equivocating is  
7 not good enough. This case has been pending for many months and is currently set for  
8 trial on February 22, 2020. By now the government should have a clear understanding of  
9 the evidence it plans to present so the defendant can properly prepare for trial to defend  
10 against the myriad allegations. To that extent, the Court will make definitive rulings at  
11 this time on the proffered 404(b) evidence the government does not intend to offer.

12        **1.        NWTM’s 1989 Bankruptcy**

13        The government unequivocally indicated it will not offer this evidence and the  
14 Court will hold them to their word. This evidence will not be admissible at trial.

15        **2.        Nevada Defamation Lawsuit**

16        The government is in error in contending the defendant “concedes” that the timing  
17 and the amount of the judgment are admissible in this case. The defendant merely  
18 “acknowledged that the existence of the civil suit and the timing and amount of the  
19 judgment may come up at trial” but continued its objection to any additional details about  
20 it. Dkt. # 201, p. 10.

21        The Court agrees with the defendant. The government has not provided any  
22 details about what or how it plans to introduce other evidence about the Nevada case or  
23 what advice it contends NWTM’s counsel advised Mr. Hansen about settlement. This  
24 Court will not allow a blanket assertion of admissibility of facts to show details  
25 demonstrating “motive, knowledge, preparation and plan.”

26        If Mr. Hansen elects to testify, the Court will permit the government to cross  
27 examine him on the existence of the civil suit and the timing and the amount of the  
28 judgment. Any details beyond these basic facts will depend upon the nature of defense

1 asserted by the defendant and the evidence to support the same. The government will be  
2 required to advise the Court before it begins cross examination of Mr. Hansen about the  
3 scope of their cross examination on the defamation lawsuit.

4 **3. Six Boxes Mailed to Archive Room in Dayton, Nevada**

5 The government has unequivocally represented it will not offer this evidence. The  
6 Court will hold them to their word. This evidence will not be admissible at trial.

7 **4. Hansen's Criminal History**

8 In 1987, Mr. Hansen was convicted of two counts of possession of an unregistered  
9 firearm for his sales of machine guns to an undercover agent. While on supervised  
10 release, in 1990 he was convicted of two counts of structuring financial transactions, two  
11 counts of failure to report transactions over \$10,000 and one count of felon in possession  
12 of a firearm. Dkt. # 205, p. 17. Prior convictions which are more than ten years old are  
13 presumptively inadmissible under Fed. R. Evid. 609(b). *United States v. Bay*, 762 F.2d  
14 1314, 1317 (9th Cir. 1984). In this case, these convictions are extremely remote as they  
15 are 33 and 30 years old respectively. Additionally, these convictions are inadmissible as  
16 the Court finds the government has not demonstrated that the probative value of such  
17 evidence substantially outweighs its prejudicial effect. Fed. Rule of Evid. 403.

18 Moreover, the Court also concludes that these convictions are too dissimilar from  
19 the charges of the indictment to demonstrate "intent" under 404(b). Rule 403 also  
20 precludes admissibility because evidence of these dated convictions would cause undue  
21 prejudice. These convictions do not prove any fact of consequence as to any of the  
22 charges contained in the indictment.

23 Thus, neither the fact of conviction nor specific evidence about these convictions  
24 or sentences are admissible. However, if the defendant elects to testify and suggests he  
25 has lived a crime-free life or has been a law-abiding citizen, the government may revisit  
26 this ruling

27 In conjunction with this ruling, the Court will likewise exclude any testimony that  
28 Mr. Hansen made comments to his employees that he had been to jail or that he could

1 return to jail. Such testimony would clearly run afoul of this Court's prohibition on  
2 referencing his dated prior convictions. Such testimony would openly and visibly cause  
3 the jury to suspect or conclude that he must have been convicted in the past in order to be  
4 afraid of returning to jail.

5 The Court now turns to the other matters noted in the government's 404(b)  
6 disclosure.

7 **5. AGO Investigations of NWTM in 2008 and 2014**

8 The government will be permitted to offer as evidence the 2008 Consent Decree  
9 signed by Mr. Hansen. From the facts presented to this Court, the Consent Decree  
10 appears to be sufficiently connected to representations made to NWTM customers in  
11 order to permit the government to present its case. The government has provided specific  
12 examples and details of the connection between the 2008 Consent Decree and the  
13 allegations in the Indictment. Dkt. # 205, pgs. 6-7.

14 The Court overrules the defendant's objection to introduction of evidence related  
15 to the 2014 AGO investigation. The admission of such evidence includes certain  
16 documents created in response to that investigation which specifically include the  
17 "spreadsheet" referenced by the government that was ostensibly produced in response to  
18 interrogatories and document requests presented to NWTM.

19 The government further contends the evidence of the investigations is  
20 "inextricably intertwined" with the allegations of the Indictment, and the Court agrees.  
21 Defendant's interpretation of *United States v. DeGeorge*, 380 F. 3rd 1203 (9th Cir. 2004)  
22 is misplaced. The jury will not understand the significance of the representations to  
23 customers and the defendants' efforts without admission of the noted evidence.

24 While the Court overrules defendant's objections to the investigation evidence in  
25 general, the government will not be permitted to offer any evidence of the AGO's  
26 conclusions from the investigation.

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1           **6. Hansen's Efforts to Determine Witness Cooperation with the FBI**

2           The defendant's objection to the admission of this evidence is overruled. This  
3 ruling pertains to the government's notice of intent to offer evidence that Mr. Hansen  
4 allegedly offered to pay a sales employee \$3,000 to try to determine whether NWTM's  
5 former General Counsel Fullington had contacted the FBI about him.

6           This evidence is admissible as evidence of Mr. Hansen's consciousness of guilt.  
7 Likewise, the government is permitted to offer these conversations as probative of Mr.  
8 Hansen's intent as allowed under Rule 404(b). Does this evidence cause prejudice to the  
9 defendant, yes. But the Court finds that the probative value of evidence of the  
10 defendant's intent is not substantially outweighed by the danger of any unfair prejudice.  
11 If requested, before this evidence is admitted, the Court will provide a limiting instruction  
12 to the jury of the limited purpose of its offering.

13           **7. Evidence Mr. Hansen Paid Employees Directly from the Vault**

14           Defendant's objection to the admission of this evidence is overruled. The  
15 government will be permitted to offer testimony or evidence of Mr. Hansen directing Ms.  
16 Erdmann to retrieve \$3,000 in cash to pay a sales employee for side work for him. The  
17 Court's ruling is predicated on this being evidence allowed under Fed. R. Evid. 404(b)(2)  
18 as evidence of their opportunity to control the vaults and their plan to control items in that  
19 vault. The Court will hold the government to its representation that it will not elicit  
20 testimony as to the purpose of the cash payment. If requested, before this evidence is  
21 admitted, the Court will provide a limiting instruction to the jury of the limited purpose of  
22 its offering.

23           **8. NWTM and Hansen's Failure to File Tax Returns**

24           The defendant's objection is overruled. While the Court agrees with the defendant  
25 that tax filings are not the same transactions as the alleged mail and wire fraud, his failing  
26 to file yearly tax filings is probative of his intent to conceal the finances of NWTM. On  
27 this issue, the Court agrees with the government that if Mr. Hansen's defense is that he  
28 was conducting a lawful, legitimate business, evidence that he failed to file tax returns is

1 probative evidence that he was not. Dkt. # 205, p. 11. Moreover, the value of the  
 2 evidence is not substantially outweighed by the danger of unfair prejudice as it goes to  
 3 his intent to conceal the business's financial status from his employees and others.

4 **9. Hansen's Management Style/Alleged Intimidation of Employees**

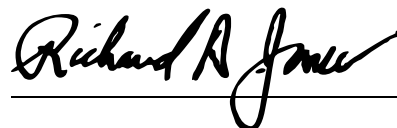
5 The Court will permit the government limited latitude to examine NWTM  
 6 employees about Mr. Hansen's alleged threatening, abusive and intimidating tactics  
 7 toward his employees. The Court finds this evidence is relevant to explain the  
 8 relationship between Mr. Hansen and his employees. This evidence is permitted to  
 9 establish context regarding their fear of being verbally abused or fired. Without such  
 10 evidence, the employees could face unfair attacks on their credibility as argued by the  
 11 government. Dkt. # 205, p. 15.

12 While limited latitude is granted for this type of evidence, the Court will not  
 13 permit evidence that Mr. Hansen told employees that he spent time in prison or that he  
 14 had killed or nearly killed individuals in prison. This type of evidence, while relevant to  
 15 the reasons or motivation of NWTM employees to perform their duties under Mr.  
 16 Hansen, will be excluded as its probative value is substantially outweighed by the danger  
 17 of unfair prejudice. Fed. R. Evid. 403.

18 **10. Paying Employees "Under the Table"**

19 Mr. Hansen objects to this evidence primarily because of its cumulative nature  
 20 considering all the other evidence the government plans to offer. This objection is overruled.  
 21 This evidence is permissible to show the defendants' control of the finances of NWTM. This  
 22 evidence is permitted to prove motive, intent, opportunity and knowledge.

23  
 24 DATED this 15th day of December, 2020.

25  
 26 

27 The Honorable Richard A. Jones  
 28 United States District Judge